*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition No.19636 of 2003

%31.8.2004

£ G. Sambasiva Rao, s/o Venkataratnam
R/o 40-1-96, Kanna Nagar, Patamata, Vijayawada-6.

..... PETITIONER

AND

$ Vijayawada Municipal Corporation,

rep., by its Commissioner,

Vijayawada.

.....RESPONDENT

!For the petitioner …Mr. V.S.R. Anjaneyulu

^For the Respondent …Mr. T.S. Venkata Ramana

<Gist:

>Head Notes:

? Cases Referred

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTY FIRST DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

-

WRIT PETITION No.19636 of 2003

Between:

G. Sambasiva Rao, s/o Venkataratnam

R/o 40-1-96, Kanna Nagar, Patamata, Vijayawada-6.

..... PETITIONER

AND

Vijayawada Municipal Corporation,

rep., by its Commissioner,

Vijayawada.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more particularly a writ of mandamus, declaring the action of the respondent Corporation as illegal and *ultra vires* to the provisions of Article 14 of the Constitution of India and also the mandatory provisions of the Hyderabad Municipal Corporation Act, declaring the notice dated 06-09-2003 as illegal, besides directing the respondent Corporation to pay the compensation for the land situated in R.S.no.389/2 of Mahanadu Road, Gunadala of Vijayawada Municipal Corporation taken by the respondent Corporation for forming the road and for construction of drain.

Counsel for the Petitioner: MR.V.S.R.ANJANEYALU

Counsel for the Respondent: MR.T.S.VENKATARAMANA

The Court made the following:

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ORDER:

The petitioner and his three sons are joint owners of the agricultural land admeasuring Ac.0.60 cents in R.S. No.389/2 of Mahanadu Road, Gunadala. The petitioner is utilizing the land for raising grass since 1992 by digging a bore well and obtaining electricity connection. He is aggrieved by a notice dated 06.09.2003 issued by the respondent directing him to construct a wall for the purpose of preventing stagnation of water in the land, which is allegedly causing harm to public health. The petitioner was advised to complete the construction of wall within seven days as otherwise a fine of Rs.2,000/- (Rupees Two thousand) per day will be

imposed. The petitioner contends that the drainage water is being let out by the Municipal Corporation without acquiring the land, and therefore, the Corporation alone should take steps for abating nuisance if any. This Court while admitting the writ petition on 18.9.2003, directed the Corporation not to take any coercive steps against the petitioner. Aggrieved by the interim order of this Court, the Corporation has now moved WVMP No.1100 of 2004 praying this Court to vacate the interim order. Though the interlocutory applications are listed, the matter was heard finally with the consent of the learned Counsel for both the parties.

The Municipal Commissioner of Vijayawada has filed a counter affidavit alleging that the Corporation has not encroached upon the land, that the petitioner has orally surrendered the land for the purpose of widening the road as per Master plan and that the Corporation has constructed a drain and underground drainage channel on the portion of the land surrendered by the petitioner to provide better facilities.

Nowhere, the Corporation has denied that the underground drainage channel is passing through the petitioner's land. Therefore, as rightly contended by the learned Counsel for the petitioner, there is a possibility of leakage from the underground drainage channel, which may be resulting in stagnation of water causing nuisance in the area. The oral surrender allegedly made by the petitioner, which is denied by the learned counsel for the petitioner, cannot be accepted in the absence of any relinquishment deed by the petitioner. Therefore, the petitioner is justified in projecting his grievance regarding the impugned notice.

The reliance placed by the learned Standing Counsel for Municipal Corporation on Section 565 of the Hyderabad Municipal Corporation Act, 1955 (the Act, for brevity), in the circumstances of this case, is not proper. Section 565 reads as under:

(1) In the event of the city being at any time visited or threatened with an outbreak of any infectious disease, or in the event of any infectious disease breaking out or being likely to be introduced into the city amongst cattle, including under this expression sheep and goats, the Commissioner if he thinks the ordinary provisions of this Act and the rules thereunder or of any other law for the time being in force are insufficient for the purpose, may with the sanction of the Government ---

(a) take such special measures, and

(b) by public notice make such temporary orders to be observed by the public or by any person or class of persons, as one specified therein and as he shall deem necessary to prevent the outbreak of such disease or the spread thereof.

(2) The Commissioner shall forthwith report to the Corporation any measures taken and any orders made by him under sub-section (1).

It is no doubt true that in cases of emergency, it is always competent for the Commissioner of Corporation to make such temporary orders to be observed by the public or by any persons or class of persons for the purpose of abetting nuisance, the same does not enable the Commissioner to direct the owner of the property to level the land and construct wall to prevent stagnation of water. If any area is low-lying and likely to cause harm to public health, it is always open to the

Commissioner to take such remedy and any measures to prevent mosquito menace and spread of diseases. However, no direction can be given to a owner of the property to develop the land in such a manner so that there would not be any stagnation of water. If the situation warrants, it is always open to the Corporation to acquire the land of the petitioner under Land Acquisition Act or by following the procedure under Section 146 of the Act. The impugned order cannot however be justified.

Accordingly, the writ petition is allowed, subject to above observation, and the impugned notice is set aside.

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Date: August 31, 2004. **V.V.S. RAO, J**

YS

L.R. Copy be marked.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the Thirty first day of August Two thousand and four.

SPECIAL OFFICER

// TRUE COPY //

SECTION OFFICER

One Fair copy to the Hon'ble Mr. Justice

V.V.S. Rao, (for his Lordships kind perusal)

To

1. The Commissioner,

Vijayawada Municipal Corporation,

Vijayawada.

2. Eight L.R. copies.

3. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

4. The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.

5. Two CD copies.